

RECORD OF ORAL HEARING

UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE BOARD OF PATENT APPEALS
AND INTERFERENCES

Ex parte MIKE KINSELLA

Appeal 2007-0150
Application 09/592,563
Technology Center 2600

MAILED

APR - 4 2007

PAT. & T.M. OFFICE
BOARD OF PATENT APPEALS
AND INTERFERENCES

Oral Hearing Held: February 13, 2007

Before KENNETH W. HAIRSTON, JOSEPH L. DIXON, and HOWARD B. BLANKENSHIP, Administrative Patent Judges.

ON BEHALF OF THE APPELLANTS:

JOANNE MASON
Ked & Associates, LLP
P.O. Box 221200
Chantilly, VA 20153-1200

33 The above-entitled matter came on for hearing on Thursday, March 8,
34 2007, commencing at 1:00 p.m., at The U.S. Patent and Trademark Office,
35 600 Dulany Street, Alexandria, Virginia, before Timothy Atkinson, Notary
36 Public.

1 JUDGE HAIRSTON: You may argue from the podium if you'd like.

2 MS. MASON: Okay. I can start whenever you're ready.

3 JUDGE HAIRSTON: Yes, you can start when you're ready.

4 MS. MASON: Okay. Thank you for making the time to see us this
5 afternoon, especially in the bad weather.

6 I'm here to talk today about our client's invention, which is a
7 messaging system. The messaging system can be used to send a message
8 from a sender to a receiver without the sender actually having the benefit of
9 the identity or the contact information of the particular recipient that he has
10 selected. In this system, central messaging system directs a message to an
11 intended recipient of that message based on some number of personal
12 characteristics that the sender has observed in a particular venue of this -- of
13 the recipient. The sender's messages sent to the recipient based on a match
14 of those observed characteristics, and those characteristics can be any
15 number of different things. It can be physical characteristics, it can be
16 location, time, things like that.

17 Some practical application, you have some number of -- some large
18 number of subscribers that subscribe to a particular service. They enter their
19 personal details into a database, and those details may be, again, physical
20 characteristics, height, weight, hair color, eye color. It may include a listing
21 of frequently visited locations. It may include -- it can be, it can be updated
22 regularly so that you can update it to say, yesterday I was at location A.
23 Tonight I will be at location B. Tomorrow I will be at location C. I am at
24 location D every Wednesday night. Something like that. It can be updated
25 to reflect the clothing that someone is wearing in a particular venue. So in
26 some venue, a first, a first member or, say a sender observes a second

1 member, say the recipient, and would like to send this -- would like to
2 somehow make contact with this recipient that he has identified. He
3 observes the physical characteristics and the location and enters those things
4 into a query along with the message that's sent to the central database. The
5 database conducts a query for a match based on these observed
6 characteristics, and tries to attach an identity to this intended recipient of the
7 message. The message is then transmitted to this intended recipient based
8 on what the database finds based on the location, the physical characteristics
9 and whatnot.

10 JUDGE HAIRSTON: So you have a message in Claim 1, but that
11 message is never sent, right? It's just adapted -- right?

12 MS. MASON: Correct. Because in some situations, prior to the
13 message being sent, the sender can get the results of the matching that the
14 database has done to attach an identity to the recipient, and then the sender
15 can choose to send it or not send it.

16 JUDGE HAIRSTON: Is there a message in the reference? Is there a
17 message created in the reference to Fraccaroli --

18 MS. MASON: Fraccaroli.

19 JUDGE HAIRSTON: Fraccaroli?

20 MS. MASON: Fraccaroli has three different -- discloses three
21 different systems, two of them prior systems, and the third his own
22 invention. In one of those three a message can be sent. In the other two, it's
23 just an indication that a match has been made. Okay?

24 So, as I said, the system can be continuously updated, so as you
25 change locations, you can update your location, you can update what you're
26 wearing, you can update anything that might allow a potential sender to

1 more easily identify you, or more accurately. Allow the system to identify
2 you, I should say. The closeness of the match may also be -- may be
3 adjusted so that, let's say if you only want exact matches to come back, it
4 will be -- it will discriminate more tightly.

5 In the Fraccaroli System, Fraccaroli discloses three different systems,
6 two of those, as I said, Prior Art (Phonetic Sp.), and the third, his invention.
7 In the Prior Art system, the first is a traditional dating service in which -- the
8 first is a traditional dating service in which members subscribe to a service,
9 they input their different physical characteristics, their preferences for a
10 match. One of those may be where they live. And then a computer database
11 generates potential matches for them, and then they can choose to send one
12 of those potential matches some sort of message, either by phone or by e-
13 mail or whatever. But in that situation, the computer is selecting recipients
14 for you. The sender, or the requester, is not identifying a recipient based on
15 observed physical characteristics or location.

16 The second system that Fraccaroli discusses are these wearable
17 devices called Hot Badges, and these Hot Badges can be preloaded with
18 some amount of personal information and preferences for matching, and as
19 these devices come into close proximity to each other, they detect each
20 other's presence, signal each other, and when there is some predetermined
21 amount of matching between the information stored on the devices and
22 they're within range, they will signal each other and let you know that there
23 is someone nearby that meets your criteria. But again, this only works -- the
24 first, the match is made, again, by these devices, by these little computerized
25 devices, and they only work within a very small limited range. So the
26 location is limited to the small range of the devices themselves.

1 The recipient -- the sender -- there is no sender and receiver really, it's
2 -- the devices are just talking to each other and signaling both parties that
3 there might be someone in range.

4 Now, in Fraccaroli's system, Fraccaroli, as his invention discloses, a
5 system which is incorporated -- an introducing (Phonetic Sp.) system,
6 which is incorporated into a mobile telecommunication system. In this
7 situation, users fill out a profile, again with their own physical characteristics
8 and then preferences for matches. This information is stored in a database,
9 and that database is associated with the home location register to which the
10 users handset, mobile handset, is associated with. As a user and his handset
11 move from one location to another, or one cell to another, the handset has to
12 register with the new base station as it enters the new cell to enable
13 appropriate call routing and the like.

14 Anyway, as the handset moves into a new cell, it registers its location
15 with the visiting location register of that cell, and that communicates back to
16 the home location register.

17 The home location register creates a grouping of mobile devices
18 within a given cell or a different location, geographic location, and then
19 requests that matches be made based on people grouped within that
20 particular cell. So it goes to a matching engine and a server that are
21 collocated with the home location register.

22 The system then sends back to the user a listing of potential matches
23 within the geographic area that the user and the handset are located at that
24 time, and allows the user, if he chooses, to send a message to any one of
25 those users that are identified within the group at that time. It can also alert
26 a user when a particular user ID has entered his area that he's in. But in that

1 instance, you have to know the identification of the person you're looking
2 for. Okay?

3 So, none of these systems that Fraccaroli discloses have an intended
4 recipient. In each of these situations, the recipient is selected for the sender
5 by a computer database. In none of these instances does the sender have an
6 opportunity to list the physical characteristics that he has observed of
7 someone in a particular venue and say, this is the person I want to meet, this
8 is the person I want to make contact with. All of the action is initiated by
9 the computer, selected by the computer, and not by the member. The
10 Fraccaroli systems are -- at least two of the three are very dependent on
11 location as the first discriminator and only the current location. So that
12 location is defined by the system, not by the user. So, if on Sunday you
13 want to find out how to make contact with someone that you saw on
14 Saturday in a different location, Fraccaroli's system can't be adapted to do
15 that.

16 So our system allows a sender to observe a potential recipient and say,
17 this is the person I would like to send this message to. That becomes their
18 intended recipient. To deliver it choice of a recipient rather than the system
19 selecting a recipient or a potential match for them, and allows the user to
20 initiate any action rather than relying on a database to dictate that action to
21 them.

22 I can stop here if you have any questions.

23 JUDGE HAIRSTON: I don't have anything further. Do you have any
24 questions? No questions.

25 MS. MASON: Okay. Would you like me to discuss the claims, the
26 specific claims, or --

1 JUDGE HAIRSTON: That's strictly up to you.

2 MS. MASON: Okay.

3 JUDGE HAIRSTON: If you feel you need to, go ahead.

4 MS. MASON: I would just like to talk about the three independent
5 claims if that's okay.

6 JUDGE HAIRSTON: Sure, go ahead.

7 MS. MASON: Okay. We have three independent claims,
8 Independent Claims 1, 23 and 46. Independent Claims 1 and 46 are
9 apparatus claims, and Independent Claim 23 is a related method claim.

10 In Independent Claim 1, we have -- we recite in the center portion of
11 Independent Claim 1, the message which the -- I'm sorry, the sender -- the
12 message which the sender composes, along with the physical characteristics,
13 the observed characteristics. It includes details of the intended recipient of
14 the message. Those details, again, are what I discussed, the physical
15 characteristics, the location. So you see, throughout Independent Claim 1,
16 we recite, intended recipient. The message comprising details of the
17 intended recipient of the message. So we feel this defines over the
18 Fraccaroli reference because in none of those three systems discussed by
19 Fraccaroli is there an intended recipient.

20 In Claim 46, we go on to recite that the message comprises personal
21 characteristics of an intended recipient of the message based on personal
22 characteristics observed by a user. So, even a little more specific.

23 And then Independent Claim 23, which is an associated method claim.
24 In the Step B, we recite: receiving messages that a central message pushing
25 system, the messages, including details of the appearance and location of the
26 intended recipient. We don't believe that any of the systems disclosed by

1 Fraccaroli at any point in time allow the sender to input details of an
2 appearance of an intended recipient or a location of an intended recipient.

3 We do have some dependent claims also, Claims 8, 30 and 31, that
4 discuss input of previous locations and frequently visited locations. As I
5 said, the two systems that Fraccaroli discusses that have anything to do with
6 location, the Hot Badges are limited to the very short range of the devices,
7 and the -- Fraccaroli's invention is dictated by the definition, the system's
8 definition of a cell or service area for the particular set of handsets, grouping
9 of handsets.

10 JUDGE HAIRSTON: Can I ask you a quick question?

11 MS. MASON: Sure.

12 JUDGE HAIRSTON: In Claim 1, you have the message sending and
13 receiving devices in the second paragraph, "telecommunication links for
14 communicating with message sending and message receiving devices."
15 Then in the second to last line you say, "adapted to transmit the message to
16 the message receiving means."

17 MS. MASON: Yes, we're aware of that, that should be device. I'm
18 sorry.

19 JUDGE HAIRSTON: Thank you.

20 MS. MASON: Thank you.

21 (Whereupon, the proceedings concluded.)